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Muzzling the Media

The Administration's attempts to reduce the flow of information in the name of national security raises fundamental questions about the role of a free press.

BY DOM BONA FEDE

One of the singular anomalies of the contemporary political scene is that Ronald Reagan, universally hailed as the "Great Communicator," presides over an Administration that from all appearances is intent on stemming the free flow of information and muzzling the national news media.

Interested observers, including constitutional lawyers, scholars, prominent journalists and public-interest advocates, widely agree that the Reagan Administration, generally under the cloak of national security, has taken an unprecedentedly narrow view of 1st Amendment rights involving free speech and an unfettered press.

Floyd Abrams, a noted 1st Amendment expert and a partner in the New York law firm of Cahill Gordon & Reindel, maintained that during the past three years, the Administration has taken "a more direct, vocal and far more visible public position in the extreme overbreadth of its definition of national security and its under-evaluation of constitutional values."

Allan Adler, counsel for the American Civil Liberties Union (ACLU), contended that "this Administration has far surpassed any previous Administration in demonstrating its disdain for the public's right to know what it is doing." Adler added: "Three decades ago, the Communist threat was the avenue to restrict the 1st Amendment and freedom of speech. Now, we're seeing that terrorism and national security are being used the same way."

Adler said that the "public threat" by CIA director William J. Casey to bring criminal charges against news organizations that purportedly violate certain national security laws "clearly changed the

game and indicated a shift by the Administration" in the zealotry with which it pursues government employees and journalists who disclose unauthorized confidential material.

"This Administration is possibly the most restrictive in recent memory in terms of the free dissemination of information," said Jane E. Kirtley, executive director of the Reporters Committee for Freedom of the Press.

She said the committee has compiled a list of 75 actions the Administration has taken that have had a "serious impact" on freedom of the press, "ranging from efforts to eviscerate the Freedom of Information Act to Casey's threats to prosecute news organizations—and that's only the stuff we know about, contrasted to what we don't know."

Others, however, take a more tempered view. Former CIA director William E. Colby said: "All Administrations go through the agony of this problem: President Kennedy did, and I imagine George Washington did. . . . Casey is simply trying to get people to pull up their socks by pointing out there are laws in this area and that these laws are very clear. He has a legal obligation to call attention to possible violations."

Casey, who enjoys a comfortable personal relationship with Reagan and is generally recognized to be the most politically oriented of recent CIA directors, has publicly asserted that the American press fails to fully comprehend and appreciate the need to protect U.S. intelligence sources, capabilities and methods. (See box, p. 1718.)

"I am trying to correct that situation," he declared in an interview in the July *Washington Journalism Review*. "All of us in the intelligence community have an obligation to sensitize the people in the media to this problem."

... We're just now trying to do it in a more systematic and aggressive way."

Casey's critics, however, argue that he seems more interested in systematically and aggressively imposing control over the press than in striking a mutually acceptable balance between press and government. They have a sense that he misunderstands their conflicting roles, with the press conditioned to challenge authority and act as a buffer to extraconstitutional or questionable activities on the part of the government, whose ambition is to get its message out and put its best face forward publicly. Inevitably, the two institutions often clash in pursuit of their goals.

While Casey has thrust himself into the forefront of the controversy, he is, in effect, a creature of the President and is presumably acting if not with the Administration's endorsement, then at least with its acquiescence. In large measure, he has become a personal symbol of an Administration that either out of distrust or institutional caution, has cultivated an arm's-length relationship with the news media and has artfully sought to impose tighter managerial control over government information, or, when conditions are favorable, to circumvent the press entirely.

Thus, a confluence of issues is brought into play, including free speech guarantees under the 1st Amendment, the press's role and responsibility, the need to assure the nation's security, the occasional conflict between civil liberties and ideology, the adversary relationship between press and government and, perhaps most important, the people's right to know as a basic element in the shaping of official policy in a democratic society.

GOVERNMENT CRACKDOWN

From the beginning, the Administration has consistently taken measures to regulate the flow of government information. These included steps to:

- prohibit an unspecified number of writers, artists and political figures, including prominent Canadian nature writer Farley Mowat and the widow of former Chilean president Salvador Allende, from entering the United States under the 1952 McCarran-Walter Act because of their views and associations.
- require all government employees and contractors who have or seek high-level

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security clearance, including political appointees but not elected officials, to submit to lie detector tests. The apparent purpose of the polygraphs is to trace leaks of information to the press and guard against infiltration by spies.

- expand, as the result of an executive order that Reagan signed, the discretion of federal agencies to classify information for an indefinite period. The order further allows the withholding of information that merely relates to national security or foreign affairs and provides authority to reclassify information already in the public domain.
- mandate that all government officials with access to high-level classified information sign statements that require them for the rest of their lives to submit for official, pre-publication review all articles and books they write for public consumption. A book by former CIA director Stansfield Turner, *Secrecy and Democracy, the CIA in Transition*, was delayed 18 months before being cleared by censors who insisted on almost 100 deletions on security grounds.
- impose a news blackout during the October 1983 invasion of Grenada and threaten to shoot any U.S. reporters who tried to reach the island on their own. Coverage of the initial stages of the assault was selectively provided by the Defense Department's own news service. Later, Defense Secretary Caspar W. Weinberger and then-White House chief of staff James A. Baker III announced that the Administration had the right to exclude the news media from future military operations if it wished to do so.
- seek to broaden existing exemptions in the Freedom of Information Act (FOIA) to include the CIA's "operational files," U.S. Secret Service records and the investigatory files of the Securities and Exchange Commission. The CIA acknowledges that it takes an average of 14.5 months for the agency to respond to an FOIA request.

In other actions, the CIA took the unprecedented step of filing a complaint with the Federal Communications Commission charging that ABC News had "engaged in deliberate news distortion" in broadcasts about the alleged connection between the agency and an Hawaii investment banker then under indictment for fraud. And in recent months, two high-level government employees, one from State and the other from Defense, were fired on suspicion of leaking information to the press.

While previous Administrations engaged in some similar actions, none was as blatant and intimidating in its efforts

to manage, if not control, the news—with the notable exception of the Nixon Administration in the Watergate cover-up, the secret bombing of Cambodia and the attempts to block release of the Pentagon Papers that detailed the genesis of the Vietnam war.

SETTING THE PATTERN

The most highly publicized and contentious incident involving the press and government centered on Casey's disclosure in May that he and other Administration officials had discussed the possibility of prosecuting five news organizations for publishing information about U.S. intelligence-gathering operations, particularly the ability of the National Security Agency (NSA) to intercept and decode messages of other nations. The CIA director indicated that the news organizations had violated a section of the Espionage Act that was enacted in 1950 but has never been applied. Casey, in his warning, identified *The Washington Post*, *The New York Times*, *The Washington Times*, *Newsweek* and *Time* magazine.

Shortly afterward, Casey and Lt. Gen. William E. Odom, the NSA director, "cautioned" reporters "against speculation and reporting details beyond the information actually released" at the espionage trial of accused Soviet spy Ronald W. Pelton in Baltimore.

Although Casey soon moderated his firm warning, he had made his point. Then, in late June, he warned two journalist-authors, Bob Woodward of *The Washington Post* and Seymour M. Hersh of *The New York Times*, as well as their publishers, that they could be violating the law if books each is writing contained secret "communications intelligence." Woodward is writing a book on Casey and the CIA and Hersh is working on a book due to be released in late summer or early fall on the downing of the South Korean passenger jet by the Soviets in 1983.

Clearly, a pattern had been set, with Casey the chief antagonist.

"This Administration has gone top-secret crazy," said Kirtley of the reporters' committee. "The longer an Administration is in office, they have a tendency to take a proprietary interest in information; they shall decide what the public should know."

Attorney Abrams said that "Casey's threats at the very least are an attempt to pressure if not muscle the press into silence in areas he believes should not be discussed. He wants to let them know if they publish or broadcast things he does not believe should be, they'll be in trouble."

Syndicated columnist Jack Anderson, famous for his investigative exposés, con-

ceded that the Administration's series of actions "affect me a little. It scares me, also, to have an Administration conducting wholesale lie detector tests and eavesdropping on their own people. It occurs at the highest level because they're frustrated."

Anderson suggested that Casey's "threats" have already had a "chilling effect" on the news media. He specifically referred to a June 8 article in *The Washington Post* in which Benjamin C. Bradlee, the newspaper's executive editor, emphasized that neither the government nor anyone else is allowed "to decide what we should print" while acknowledging that his newspaper regularly consulted with the government "about sensitive stories, and we do withhold stories for national security reasons, far more than the public might think. The *Post* has withheld information from more than a dozen stories so far this year for these reasons."

Anderson's view of Bradlee's article suggested to him that the newspaper "has been chilled a little. I don't mean they are not doing their job; they are. But they are examining procedures much more closely and being more cautious than before Casey's threat."

Los Angeles Times Washington bureau chief Jack Nelson said that the news media have generally been passive in rebutting Administration efforts to constrict the free flow of information. "Certainly, there has not been any strong editorial outcry, maybe with some papers but not many," he said. "Why? For the same reason that people like the President but oppose his policies. The economy is not bad, there is little inflation, people are fairly happy. That feeling permeates the news media."

On the perennial question of government over-classification, Richard K. Betts, a Brookings Institution intelligence specialist and former staff member of the National Security Council and Senate Select Committee on Intelligence, contended that it is not done "out of malevolence or to hide things from people because it would be embarrassing"—an impression widely held among critics. Instead, he said, "there is a tendency when in doubt to err on the side of caution. Sometimes the classification is handled by low-level people who don't know any better. Also, it is being done at so many different places."

Betts suggested that perhaps a "special court" working with Congress might be established to deal with government classifica-

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tion. "I don't know how it would work; it would probably be swamped," he said. "But it might reduce some of the abuses and take the burden off the press."

Meanwhile, Weinberger, writing last October in *Defense/85*, a Pentagon publication, stated that the role of the news media in U.S. society had to be weighed against competing national security requirements—that depending on national priorities, one constitutional right sometimes superseded another constitutional right. "Freedom of the press has never been universally defined," he said. "We are still debating those 13 simple words written two centuries ago—'Congress shall make no law . . . abridging freedom of speech or of the press'—with regard to what the founding fathers meant by them and how they apply to-day."

Weinberger argued that while the press is protected by the 1st Amendment, "such protection cannot diminish the other legitimate functions of good government," including "the equally legitimate tradition of the government's need for secrecy, especially in national defense."

But, he added, "unfortunately, some reporters and their editors do not agree. Some act as if they are in an appropriate position to decide for themselves whether information that we have classified should actually be protected."

In so saying, Weinberger articulated the Administration's position, while pointing up the uneasy balance between two legitimate and vital interests.

THE MORISON AFFAIR

For the past year or so, a rash of espionage cases has become a steady news diet, including those involving retired Navy communications specialist Jerry Alfred Whitworth, former CIA agent Edward Lee Howard, former NSA intelligence official Pelton and ex-Navy chief warrant officer John A. Walker. All involved government employees who had access to top-secret intelligence and who were charged with selling out to the Soviets. Although spiced with drama and intrigue, each of the cases from a constitutional standpoint were mostly cut and dried.

Ironically, the most significant and complicated case was the least publicized—that of Navy intelligence analyst Samuel Loring Morison. A Vietnam veteran, grandson of naval historian Samuel Eliot Morison and a 10-year employee of the Naval Intelligence Support Service, he was accused of taking three KH-11 satellite photographs labeled "secret" of a Black Sea shipyard where a new, nuclear-powered Soviet aircraft carrier was under construction and mailing them to

the British magazine *Jane's Defence Weekly*, for whom he moonlighted, a fact known to his Navy superiors.

For leaking the classified photos to the press, Morison was charged with theft of government property and espionage. It marked only the second time since the Espionage Act was enacted in 1917 that the law was used to prosecute someone for leaking classified information to the press rather than to foreign agents. The earlier case, dismissed by the Supreme Court, involved the prosecution of Daniel Ellsberg and Anthony Russo for releasing the Pentagon Papers.

In effect, said David Wise, who frequently writes on espionage and CIA matters, "the Administration has sought to marry the classification system to the espionage laws."

The ACLU's Adler said that "the Administration's efforts come into sharp focus with the Morison case; they do not distinguish between government employees who leak information to the press and those who engage in espionage. They equate leaking with espionage."

Last October, Morison was convicted and is currently free on bond pending appeal.

The Morison affair, Adler said, "represented a clear turning point for the Administration. They decided to go ahead and try their luck in court. It was a calculated gamble. Their first step was to secure a conviction. When that proved successful, an emboldened Casey went one step further and applied more pressure on the press itself."

Wise similarly saw the Administration's strategy behind the Morison case as a two-part process—"to intimidate officials for unauthorized leaks at one end and intimidate reporters at the other end."

Adler said he was convinced that the Administration went beyond the intent of the Espionage Act in prosecuting Morison for leaking information to the press. "Casey," he said, "did a magnificent job of salesmanship."

During the Morison trial, government prosecutors stressed the undeniable, that he had willfully transmitted photographs and documents related to national defense to someone not entitled to receive them. The critical question of whether the transmitted material could cause damage or injury to the United States or be of potential advantage to a foreign power—a central issue in espionage cases—was never passed upon.

A key witness for the defense was Roland S. Inlow, a retired, 28-year CIA

veteran who formerly directed the agency's operations dealing with photographic satellite reconnaissance.

In his testimony, Inlow said that based on his professional and technical experience, the disclosure of the three satellite photographs in *Jane's* would not cause damage or injury to the security of the United States.

In a lengthy account featured in "First Principles," published by the ACLU's Center for National Security Studies, Inlow wrote, "Morison clearly had committed a misdeed; but what he did was not 'espionage.'"

Inlow testified during the Morison trial that the Soviets had earlier acquired a KH-11 technical manual and that "the photographs, as printed in *Jane's*, would have revealed no technical characteristics about the imaging satellite that the Soviet Union did not already know about in detail. . . . The potential for damage from the disclosure of these three photographs was zero."

He suggested in his written account that the government had decided to "make an example" of Morison. He added that "the guilty verdict in the Morison trial, if upheld on appeal, would establish precedents in more than one direction. It clearly offers a precedent for indicting persons who leak information under many types of circumstances."

SECRETS AND RIGHTS

Spelling out the differences between the press and government, a *Washington Post* reader wrote in a July 1 letter to the editor: "The intelligence community serves the governmental consumer, employs mostly clandestine sources and protects those sources by means of a legally sanctioned classification system. The information itself is protected largely because it can reveal sources."

"The press, on the other hand, serves the public at large (including those same governmental consumers), employs mostly open sources and, while it protects the sources, serves the wider audience by printing the information."

In essence, the press-government issue revolves around the demand to reconcile national security requirements with constitutional rights.

Casey has asserted that the way to accomplish this is "to tighten up within the government."

Wise interprets that as a move toward the British Official Secrets Act, which imposes strict limitations on the ability of the press to divulge national intelligence information.

The Brookings Institution's Betts questions the absoluteness of the media's constitutional rights. "I'm not sure the press

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should be exempt from these questions any more than other institutions," he said. While acknowledging the difficulty involved, he suggested that "there ought to be some other check on the discretion of the press other than the press itself."

Contributing to the dilemma is the climatic condition that prevails between the press and this Administration, underscored in Secretary of State George P. Shultz's comment following the media criticism of the Grenada invasion: "It seems as though the reporters are always against us, ... always seeking to report something that's going to screw these things up."

Central to the Administration's campaign to contain national intelligence information are its efforts to plug leaks by reducing the number of officials with access to classified documents and imposing stricter security curbs on military and civilian employees who handle secret codes and cryptographic devices.

In former CIA director Colby's view, "the leakage problem has gotten more serious. The general problem is the lack of standards and discipline in society. There are whistle-blowers and inquiring reporters. ... There is a contempt for security."

Albert R. Hunt, Washington bureau chief of *The Wall Street Journal*, however, offered a different view. Administration officials, he said, typically will "draw a distinction between good and bad leaks. Good leaks are those which help and support their policies; bad leaks are those which don't put them in a good light."

Joseph F. Laitin, a former assistant public affairs secretary at Defense and Treasury and now the ombudsman at *The Washington Post*, said, "While Casey threatens *The Post* and other newspapers, he should look within the Administration for leaks."

James R. Schlesinger, the former Defense Secretary who briefly served as CIA director in 1973, said: "The problem of leakage is generally a problem of the executive branch. I think the press is generally responsible."

Casey, nonetheless, insists he will not retreat from his hard-line position and will seek to prosecute anyone, including members of the press, whom he believes has violated laws covering secret communications intelligence.

Adler, meanwhile, expressed doubt that Reagan would want to go down in history "as the first President since the Alien and Sedition Act to try to prosecute a news organization. ... The decision to prosecute *The Post* or any of the other newspapers will have to come from the top."

The anomaly, Abrams said, "is not so much Reagan as the 'Great Communicator' but that of an Administration that wants to get government off the backs of people in the economic sphere but is unwilling to take a position like that in the area of 1st Amendment rights." □

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When Casey's at the Bat

Despite a lifetime on the cutting edge—as a World War II agent in the Office of Strategic Services, as a Wall Street venture capitalist who became a multimillionaire, as chairman of the Securities and Exchange Commission (SEC), as Ronald Reagan's 1980 campaign chairman and finally as CIA director—William J. Casey has remained an enigma.

An unimposing, slightly rumpled man, he does not carry his 73 years lightly. His glowering gaze through thick glasses and his tendency to mumble as he speaks, as though he is conspiring aloud to himself, serve to obscure rather than reveal. Impatient and intimidating, Casey could easily be cast as a

worldly, autocratic bishop addressing one of his rustic parishioners.

While he can be courtly among his peers, he is not one to stand on ceremony at other times. Albert R. Hunt, Washington bureau chief of *The Wall Street Journal*, recalled: "I met him at a party one time; he came over and in dark tones asked me if we had ever violated the Agents Identity Act. I told him no."

The puzzling question within the Washington press corps these days is whether Casey is sincere in his threat to prosecute the news media should they disclose classified information that bears on national security or is simply trying to chill the media into paralysis.

"Whether he is bluffing or not, I'm not sure," Hunt said. "But you have to take Casey seriously."

According to syndicated columnist Jack Anderson, "Casey sincerely believes the public and press ought not be shown the secrets of government and that the government ought to operate in the dark. Obviously, you can be more effective operating in the dark—but the cost is too high in terms of freedom and the people's right to know. . . . I think it is his nature. He behaved the same way during the Nixon Administration when he was SEC chairman. He went to elaborate lengths to put documents into safe keeping so they couldn't be subpoenaed. . . . He's a security nut; he believes only those in power should know what's going on. . . . But I don't think they are going to prosecute any newspaper."

Joseph F. Laitin, a former assistant public affairs secretary at the Defense and Treasury Departments and now the ombudsman at The Washington Post, said: "Casey's threat was part bombast and part showboat, with a menacing backdrop to it. He was testing the waters. If it had caught on publicly, the way [former Vice President] Spiro Agnew's attack on the press did [in 1969], there would have been real trouble. But the American public was too smart to buy it."

It is unclear whether Casey is a maverick motivated by personal convictions and prejudices or is acting as a stalking horse for an Administration that wants to see how far it can go in challenging the news media.

"Part of it is ideology," said 1st Amendment legal expert Floyd Abrams of Casey's duel with the press. "He genuinely believes it is wrong and dangerous for the press to say these things [about classified intelligence] and displays a marked insensitivity to 1st Amendment rights. It is still too early to say if the Justice Department and the White House fully support him. To the degree that he is the point man for the attack on the press, or is doing it on his own, the Administration is content to let him take the lead."